

Section 2

Permitting and Consultation

This section describes the applicable U.S. Army Corps of Engineers (Corps) permitting and consultation covered under the Seattle Biological Evaluation.

2.1 Corps of Engineers Regulations

2.1.1 Statutory Authority

The Corps regulates activities in waters of the United States through the following:

- Section 10 of the Rivers and Harbors Act of 1899
- Section 404 of the Clean Water Act of 1972.

The activities discussed in this document are regulated under Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act.

Under Section 10 of the Rivers and Harbors Act, a Corps permit is required for any structure or work that occurs above or below navigable waters of the United States. For Washington, a list of navigable waters and their extents is available on the Corps' website: www.nws.usace.army.mil/.

Navigable waters within and adjacent to Seattle are shown on the Corps website, listed below, and shown on Figure 1. Under Section 10, the Corps regulates all activities waterward of the ordinary high water (OHW)¹ line in non-tidal waters (freshwater) and waterward of the mean high water (MHW)² line in tidal (marine) waters.

¹OHW: The visible line on a bank where the presence and action of waters are so common as to leave a mark on soil or vegetation. As used by the Corps, this means the line on the shore of **non-tidal** (freshwater) streams and lakes. For **tidally influenced** (marine) waterbodies, OHW correlates to the mean higher high water (MHHW).

²MHW: A tidal datum that is the average high water height. As used by the Corps, this term means the elevation on the shore of **tidal** waters (ocean, bays estuaries, and certain rivers) reached by the plane of the average high water.

The Corps regulates the following waters:

- Duwamish River (the entire length within city limits is navigable)
- Lake Washington Ship Canal (entire length is navigable)
- Lake Union (entire length is navigable)
- Lake Washington (entire length is navigable)
- Puget Sound (entire length is navigable).

Section 404 of the Clean Water Act requires a Corps permit for the discharge of dredged or fill material into all waters of the United States, including special aquatic sites such as wetlands, mudflats, and vegetated shallows. Under Section 404, the Corps regulates all fill or discharge activities waterward of the OHW line in non-tidal waters and waterward of the mean higher high water (MHHW)³ line to the limit of the United States territorial seas in tidal waters. If wetlands or special aquatic sites occur adjacent to open water, Corps' jurisdiction extends to the landward limits of wetlands or special aquatic sites. For wetlands that are adjacent to tributaries to United States waters, Corps' jurisdiction follows the boundaries of the wetlands.

2.1.2 Permit History with the City of Seattle

Seattle has many departments, some of which construct and/or operate and maintain projects that are subject to Corps permits and ESA consultation. These departments include Seattle Public Utilities, Seattle Parks and Recreation, Seattle City Light, Seattle Department of Planning and Development and the Seattle Department of Transportation.

From 1999 to 2004, the Corps issued 51 permits to City agencies. The most common permits issued (16) were for **stream and shoreline restoration** projects. These projects include placement of large woody debris, improvement of fish passage via weirs in scour areas, and bulkhead replacement with soft bank protection and vegetation establishment. The second largest number of permits (13) was issued for **construction and repair of piers, piling, floats, and boat ramps**. Most of these projects were substantial in-water work in inland marine waters and freshwater lakes.

The City and the Corps have worked together to develop a process to streamline permitting and ESA and Section 7 coordination with the Services. This process, called 'facilitated' permit coordination, was granted under Section 214 of the Water Resources Development Act in December 2000. The City of Seattle is the first public agency in the country to develop and use facilitated permitting. Facilitated permit coordination provides City staff with a set of people for consultation and a process to get a Corps permit and associated ESA consultation.

Seattle Public Utilities also maintains the City of Seattle *Standard Specifications for Road, Bridge, and Municipal Construction* (Standard Specifications), the contractual

³MHHW. A tidal (marine) datum that is the mean (average) of the 2 highest tides.

basis for public and private construction on City property and in rights-of-way, and found at: www.seattle.gov/util/engineering.

The Standard Specifications apply whenever any public or private construction is performed within the rights-of-way of the City of Seattle including work performed by private parties at their own expense under authority granted by ordinance of the City Council or by permit of the Seattle Department of Transportation's Street Use section. These Standard Specifications should be used, as applicable, along with the methods and conservation measures given in Seattle Biological Evaluation Sections 3 and 4.

2.2 Consultation with the Services

Corps permit applications that include work in water or wetlands must be reviewed for impacts to ESA-listed fish and wildlife species. The Corps uses biological evaluations to conduct ESA Section 7 and Essential Fish Habitat consultation with the Services to assess the potential effects of a project or action on a listed species. The biological evaluation must include all areas directly **and** indirectly affected by the project.

Direct effects are the immediate effects of a project. For example, working along a stream can affect Chinook salmon in that stream.

Indirect effects are those caused later by an action, or in a broader geographic area, and are reasonably likely to occur. For example, removal of a fish barrier could cause Chinook salmon to move upstream into a polluted area above the project area and the fish may be adversely impacted as a result.

In the spring of 1999, several species of salmonids in Washington waters were listed under the ESA. Since these listed species may be affected by in-water work in many areas of Washington—including Seattle—the Corps, as mandated by Section 7 of the ESA and Department of the Army permit regulations at 33 CFR 325.2(b)(5), consults with the Services on most permit applications it receives.

2.3 What to Submit to the Corps

This Seattle Biological Evaluation replaces the individual biological evaluations required for Section 7 consultation. For the projects or activities covered under this Seattle Biological Evaluation, the City of Seattle would submit the following application package to the Corps:

- **Permit application.** Use the Joint Aquatic Resource Permits Application (JARPA) form, available at [the City Facilitated Federal Permitting website](http://www.seattle.gov/util/engineering). See SPIF below.
- **Specific Project Information Form (SPIF).** The SPIF is a new online form developed for and referencing this Seattle Biological Evaluation. Use Section 5 of this Seattle Biological Evaluation and figures 3, 6, 8, 9, 11 or 12, as needed, to identify ESA-listed species or their habitat in your project area. You may need to

consult with scientists to complete the information on which ESA-listed species are in your project or maintenance area and which species may be affected by your project or maintenance activity. The SPIF is available on the City of Seattle Facilitated Federal Permitting website:

http://www.seattle.gov/util/Engineering/Consulting_Resources/Permit_Coordination/index.asp.

- **Permit drawings.** Permit drawings requirements are available at the Corps website: www.nws.usace.army.mil/.

Upon receipt of these documents, the Corps will request, if necessary, additional information to complete the application package. The Corps will then initiate individual ESA and Essential Fish Habitat consultation with the Services.

